IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Satya Narayan & ors. Versus Krishi Upaj Mandi Samiti, Sojat Road.

S.B. Criminal Misc. Petition No. 18/2002

and

Ayodhaya Devi & ors. Krishi Upaj Mandi Samiti, Sojat Road.

S.B. Criminal Misc. Petition No. 17/2002.

...

Date of Order: August 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Mukul Singhvi, for the petitioners.
Mr. Ravi Bhansali, for the non-petitioner.

BY THE COURT:

By these two criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 28-9-2001 passed by the Additional Chief Judicial Magistrate, Sojat City, district Pali (for short, "the trial Court" hereinafter), whereby the trial Court dismissed the applications filed by the petitioners seeking recall of the order taking cognizance of the offences against them.

I have heard learned counsel for the parties.

The controversy involved in the instant matters stand squarely covered by the decisions of the Hon'ble Supreme Court in Adalat Prasad Vs. Roop Lal Jindal & ors., JT 2004 (7) SC 243; and a Three Judge Bench of the Hon'ble Supreme Court in Subramanium Sethuraman Vs. State of Maharashtra & Anr., 2004 Cr.L.J. 4609.

In Adalat Prasad Vs. Rooplal Jindal & ors. (supra) Hon'ble Apex Court held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order; hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

In Subramanium Sethuraman Vs. State of Maharashtra & Anr. (supra), a Three Judge Bench of the Hon'ble Supreme Court, reiterating the view taken in Adalat Prasad Vs. Roop Lal Jindal & ors. case (supra), held as under:-

> "Issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a

> preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same Court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order."

In this view of the matter, the impugned orders cannot be said to be erroneous.

The criminal miscellaneous petitions are, therefore, dismissed.

(H.R. PANWAR), J.

mcs